

**State of Vermont**  
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March 31, 2015

Mrs. Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street  
Montpelier, Vermont 05620

Re: Docket 7970-VGS System Expansion Phase I

Dear Mrs. Hudson:

Attached are the comments of the Department in response to the Motion to Admit Evidence From Docket 8328 submitted by Nathan Palmer on March 9, 2015.

Please let me know if you have any questions.

Sincerely,

  
Louise C. Porter  
Special Counsel

cc: Service List



**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the construction of the “Addison Natural Gas Project” consisting of approximately 43 miles of new natural gas transmission pipeline in Chittenden and Addison Counties, approximately 5 miles of new distribution mainlines in Addison County, together with three new gate stations in Williston, New Haven and Middlebury, Vermont

**THE VERMONT DEPARTMENT OF PUBLIC SERVICE  
COMMENTS ON PALMER MOTION**

Pursuant to the Procedural Order Re: Second Remand issued by the Vermont Public Service Board (Board) on March 25, 2015, the Vermont Department of Public Service (Department) hereby provides the following brief comments on Nathan Palmer’s March 10, 2015, motion (1) to admit records from the Docket No. 8328 proceeding in the instant docket, and (2) to adjust the schedule in this proceeding to ensure that all relevant information and evidence from Docket No. 8328 can be used by all parties for the purposes of discovery, technical hearings, and filing of briefs. The Board should reject Mr. Palmer’s first request as both unsupported and unnecessary and his second request as moot.

With respect to the first request, Mr. Palmer seeks the admission of all records—both evidentiary and non-evidentiary—as evidence in this proceeding. While Mr. Palmer supports his request with an appeal to fairness and efficiency, he cites no rule of evidence or procedure that would allow such wholesale incorporation of documents from one proceeding as evidence in another. Nor was the Department able to find a previous example in which the Board granted such a broad and extraordinary request.

Although not expressly labelled as such, Mr. Palmer’s motion is essentially a request for the Board to take judicial notice of all documents from Docket No. 8328 in this proceeding. The

Board's ability to take judicial notice of certain facts is well established and was explained clearly in Docket No. 6860. *See Petitions of Vermont Electric Power Company, Inc.*, Docket No. 6860, Order of 10/6/2004. In short, the Board explained that it is able to take notice of "generally recognized technical or scientific facts within [the Board's] specialized knowledge" and of "judicially cognizable facts." *Id.* The documents in Docket No. 8328 are neither.

Moreover, the Board has previously rejected a similar request (though more modest in scope) than the one made by Mr. Palmer. In Docket No. 7121—a condemnation proceeding related to the Northwest Reliability Project—VELCO sought to demonstrate the reasonable necessity standard under 30 V.S.A. § 112, in part, by asking the Board to take judicial notice of certain findings from the underlying section 248 order related to need as well as the fact that certain evidentiary submissions were made in the section 248 proceeding. *Amended Petition of Vermont Electric Power Company, Inc. for authority to condemn easement rights*, Docket No. 7121, Order of 8/22/2006. The Board held the following.

It would be inappropriate to grant VELCO's request to allow judicial notice "that VELCO made certain evidentiary submissions in Docket 6860 relating to necessity, undergrounding, and aesthetics" to "serve as evidence" in this condemnation proceeding. Whether or not they made such submissions in another Docket is not relevant here. What is important here, is that VELCO demonstrates in this Docket that it meets the standards set out in § 112. Furthermore, the evidence from Docket 6860 does not constitute facts that are "not subject to reasonable dispute" and, therefore, are not susceptible to judicial notice.

*Id.* (internal footnotes omitted).<sup>1</sup>

Just as it would be inappropriate for the Board to incorporate submissions made in a section 248 proceeding into a subsequent condemnation proceeding, it would also be inappropriate to incorporate submissions and other documents made in Docket No. 8328 into the instant proceeding. In both examples, the two proceedings are different in important and substantive ways. While the Department is sympathetic to Mr. Palmer's appeal to fairness and efficiency as the principles motivating his request, the Department believes granting such

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<sup>1</sup> In contrast, the Board recognized that VELCO should be able to submit for judicial notice *findings* from underlying section 248 order.

extraordinary relief would accomplish neither. On the contrary, granting Mr. Palmer's request would introduce a significant (and as discussed below unnecessary) appealable evidentiary issue in this proceeding, and it would cause confusion in a proceeding that is already on a tight schedule. The Board should therefore adhere to its precedent and reject the request.


Moreover, the relief sought by Mr. Palmer is not necessary to accomplish what appear to be the goals underlying his request. Mr. Palmer argues that documents in Docket No. 8328 can inform many of the questions that were raised during the first remand proceeding and can serve to clarify and explain the second cost update that is the subject of the instant remand proceeding. The Department respectfully suggests that the submissions made in Docket No. 8328 are a matter of public record and are therefore available to any party.. In this way, they are already available to inform any party that requests them from the Board. Moreover, to the extent that a party seeks to introduce particular documents or submissions from Docket No. 8328, either as affirmative evidence or as impeachment evidence, the parties have the ability to do so. Thus, Mr. Palmer is not without relief if the Board adheres to its precedent and rejects the extraordinary request.

In making this recommendation, the Department does not seek to elevate formal rules of evidence over the common sense appealed to (both here and throughout the proceeding) by Mr. Palmer. In the Department's view, the Board has heretofore struck a reasonable balance between maintaining appropriate evidentiary principles while at the same time allowing the parties, especially those proceeding *pro se*, a degree of flexibility that dispenses with some of the more onerous formalities. The Department would urge the Board to continue to do so in the second remand proceeding.

As a final matter, the Department believes that Mr. Palmer's scheduling request is now moot. The parties (including Mr. Palmer) all took part in the March 18 status conference, at which the schedule was discussed. The Board established the schedule after hearing the parties' positions at the March 18 conference. The Department therefore believes that the scheduling request in Mr. Palmer's motion, made before the March 18 status conference is now moot, and should therefore be rejected.

Dated at Montpelier, Vermont this 31<sup>st</sup> day of March 2015.

VERMONT PUBLIC SERVICE DEPARTMENT  
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By:   
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Special Counsel

cc: Docket No. 7970 Service List

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